

**REMARKS**

Claims 1-9, 11-16, 18-27, 29-34 and 36-46 are pending. Claims 1-5, 12, 19-23 and 30 were amended to delete the phrase "Section 412(i)." Claims 1-5, 12, 19-23, 30, 37 and 42 were amended to address the Examiners' request that certain claim steps be rewritten to more explicitly recite the specific actions being performed. Claims 6, 7, 9, 11, 13, 14, 16, 18, 38, 39 and 41 were amended so that the steps and elements are in concordance with their respective amended independent claims. Claims 10, 17, 28 and 35 were previously canceled.

Withdrawal of all objections and rejections of the originally filed claims are respectfully requested for at least the reasons set forth below.

***Examiner Interview***

Applicant telephoned Examiner Karmis on October 7, 2004 to clarify the formal grounds of rejection regarding claims 37 and 42 and claims dependent thereon in view of the discussion of U.S. Patent No. 6,636,834 (Schirripa) on page 8 of the Office Action. Examiner Karmis stated that the grounds of rejection should be U.S. Patent No. 6,304,859 (Ryan et al.), taken alone, but that alternatively, the grounds are Ryan in view of Schirripa.

Applicant also requested clarification as to whether the rejection under 35 U.S.C. § 101 would be overcome by the deletion of the phrase "Section 412(i)." The Examiner confirmed that this rejection, as well as the rejection under 35 U.S.C. § 112, second paragraph, would be overcome by the deletion.

Applicant wishes to thank Examiner Karmis and Primary Examiner Jagdish Patel for extending the courtesy of a personal interview in respect to this application on October 27, 2004 with Applicant and Applicants' undersigned representative. During the interview, a previously faxed Draft Amendment was discussed. The Examiners requested that certain claim steps be rewritten to more explicitly recite the specific actions being performed and proposed language was discussed. The present version of the Amendment incorporates such changes and incorporates substantially the same language proposed at the interview. With respect to the rejections under 35 U.S.C. § 102(e) and § 103, no agreement was reached regarding the

patentability of the claims over the applied references. However, the Examiner agreed to review the arguments for patentability upon formal submission of the Amendment.

***35 U.S.C. § 112, second paragraph, rejection***

Withdrawal of this rejection is requested in view of the cancellation of the phrase "Section 412(i)" from the claims.

***35 U.S.C. § 101 rejection***

Withdrawal of this rejection is requested in view of the cancellation of the phrase "Section 412(i)" from the claims.

***Prior Art Rejections***

All pending claims were rejected under 35 U.S.C. § 102(e)/103 as allegedly being anticipated by or unpatentable over U.S. Patent No. 6,304,859 (Ryan et al.), hereafter, "Ryan." New claims 37-46 were additionally rejected over Ryan in view of Schirripa.

The previous Amendment filed on June 11, 2004 fully addressed and rebutted all of the arguments made by the Examiner regarding the applicability of Ryan to the present invention. Since the present set of claims still include all of the limitations argued in the previous response, reference should be made to the previous response, which is incorporated herein. The following additional remarks are provided.

1. All pending claims are patentable over the applied references because they recite that the plan owns the policy

As fully discussed in the previous Amendment, in Ryan, the employee, not the plan, owns the policy. This is a fundamental and patentable distinction. Nor does Schirripa disclose or suggest any scheme that makes up for this deficiency in Ryan. Each independent claim recites this feature. The relevant claim language is provided below.

(d) electronically generating a separate agreement that extra-contractually modifies the variable life insurance policy, wherein the plan includes the policy and the separate agreement (claim 1)

(d) electronically generating a separate agreement that defines the terms under which the variable life insurance policy is to be used in the defined benefit pension plan, wherein the plan includes the policy and the separate agreement (claim 2)

(d) electronically generating a separate agreement that extra-contractually modifies the variable annuity policy, wherein the plan includes the policy and the separate agreement (claim 3)

(d) electronically generating a separate agreement that defines the terms under which the variable annuity policy is to be used in the defined benefit pension plan, wherein the plan includes the policy and the separate agreement (claim 4)

(d) electronically generating a separate agreement that extra-contractually modifies the selected at least one policy, wherein the plan includes...at least one of the policies (claim 5)

(d) electronically generating a separate agreement that defines the terms under which the selected at least one policy is to be used in the defined benefit pension plan, wherein the plan includes...at least one of the policies (claim 12)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes:

(i) a variable life insurance policy (claim 19)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes:

(i) a variable life insurance policy (claim 20)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes:

(i) a variable annuity policy (claim 21)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes:

(i) a variable annuity policy (claim 22)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes:

(i) at least one policy... (claim 23)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes:

(i) at least one policy... (claim 30)

(c) funding the defined benefit pension plan using the selected at least one policy, wherein the plan includes the at least one policy (claim 37)

(b) at least one processor that...electronically generates a defined benefit pension plan that includes:

(i) at least one policy... (claim 42)

2. All pending claims are further patentable over the applied references because they recite that the variable life insurance policy and/or variable annuity policy is used to fund the defined benefit pension plan

As fully discussed in the previous Amendment, in Ryan, the employee funds the variable life insurance policy with a combination of compensation from an employer and a loan from the ERISA plan. There is no scheme in Ryan wherein the policy funds a pension plan. This is another fundamental and patentable distinction. Nor does Schirripa disclose or suggest any scheme that makes up for this deficiency in Ryan. Each independent claim recites this feature. The relevant claim language is provided below.

(c) funding the qualified defined benefit pension plan using the variable life insurance policy (claim 1)

(c) funding the qualified defined benefit pension plan using the variable life insurance policy (claim 2)

(c) funding the qualified defined benefit pension plan using the variable annuity policy (claim 3)

(c) funding the qualified defined benefit pension plan using the variable annuity policy (claim 4)

(c) funding the qualified defined benefit pension plan using the selected at least one policy (claim 5)

(c) funding the qualified defined benefit pension plan using the selected at least one policy (claim 12)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(ii) a source of funding for the qualified defined benefit pension plan using the variable life insurance policy (claim 19)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(ii) a source of funding for the qualified defined benefit pension plan using the variable life insurance policy (claim 20)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(ii) a source of funding for the qualified defined benefit pension plan using the variable annuity policy (claim 21)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(ii) a source of funding for the qualified defined benefit pension plan using the variable life insurance policy (claim 22)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(ii) a source of funding for the qualified defined benefit pension plan using the selected at least one policy (claim 23)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(ii) a source of funding for the qualified defined benefit pension plan using the selected at least one policy (claim 30)

(c) funding the defined benefit pension plan using the selected at least one policy (claim 37)

(b) at least one processor that...electronically generates a defined benefit pension plan that includes...

(ii) a source of funding for the defined benefit pension plan using the selected at least one policy (claim 42)

3. Claims 1-9, 11-16, 18-27, 29-34 and 36 are further patentable over the applied references because they recite that there is a guaranty of the plan benefits via the separate agreement and the variable life insurance policy and/or the variable annuity policy

As fully discussed in the previous Amendment, in Ryan, the variable life insurance policy does not guarantee the benefits of the ERISA plan discussed in Ryan. There is no disclosure or suggestion of any other scheme for guaranteeing the benefits of the ERISA plan discussed in Ryan. Nor does Schirripa disclose or suggest any scheme that makes up for this deficiency in Ryan. The relevant claim language is provided below.

(e) providing a guaranty of the plan benefits using the plan's policy and separate agreement (claim 1)

(e) providing a guaranty of the plan benefits using the plan's policy and separate agreement (claim 2)

(e) providing a guaranty of the plan benefits using the plan's policy and separate agreement (claim 3)

(e) providing a guaranty of the plan benefits using the plan's policy and separate agreement (claim 4)

(e) providing a guaranty of the plan benefits using the plan's separate agreement and at least one policy (claim 5)

(e) providing a guaranty of the plan benefits using the plan's separate agreement and at least one policy (claim 12)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(iv) a guaranty of the plan benefits using the plan's policy and separate agreement (claim 19)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(iv) a guaranty of the plan benefits using the plan's policy and separate agreement (claim 20)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(iv) a guaranty of the plan benefits using the plan's policy and separate agreement (claim 21)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(iv) a guaranty of the plan benefits using the plan's policy and separate agreement (claim 22)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(iv) a guaranty of the plan benefits using the plan's policy and separate agreement (claim 23)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(iv) a guaranty of the plan benefits using the plan's policy and separate agreement (claim 30)

4. Claims 1-9, 11-16, 18-27, 29-34 and 36 are further patentable over the applied references because they recite that the defined benefit pension plan is a qualified plan

As fully discussed in the previous Amendment, in Ryan, the ERISA plan is a non-qualified plan. Nor does Schirripa disclose or suggest any scheme that makes up for this deficiency in Ryan. The relevant claim language is provided below.

1. A computer-implemented data-processing method for creating a qualified defined benefit pension plan funded using variable life insurance contracts, the method comprising:

(a) entering, via at least one user interface, actuarial data used to create the qualified defined benefit pension plan...

(c) funding the qualified defined benefit pension plan using the variable life insurance policy...

2. A computer-implemented data-processing method for creating a qualified defined benefit pension plan funded using variable life insurance contracts, the method comprising:

(a) entering, via at least one user interface, actuarial data used to create the qualified defined benefit pension plan...

(c) funding the qualified defined benefit pension plan using the variable life insurance policy...

3. A computer-implemented data-processing method for creating a qualified defined benefit pension plan funded using variable annuity contracts, the method comprising:

(a) entering, via at least one user interface, actuarial data used to create the qualified defined benefit pension plan...

(c) funding the qualified defined benefit pension plan using the variable annuity policy...

4. A computer-implemented data-processing method for creating a qualified defined benefit pension plan funded using variable annuity contracts, the method comprising:

(a) entering, via at least one user interface, actuarial data used to create the qualified defined benefit pension plan...

(c) funding the qualified defined benefit pension plan using the variable annuity policy...

5. A computer-implemented data-processing method for creating a qualified defined benefit pension plan funded using at least one of life insurance contracts and annuity contracts, the method comprising:

(a) entering, via at least one user interface, actuarial data used to create the qualified defined benefit pension plan...

(c) funding the qualified defined benefit pension plan using the selected at least one policy...

12. A computer-implemented data-processing method for creating a qualified defined benefit pension plan funded using at least one of life insurance contracts and annuity contracts, the method comprising:

(a) entering, via at least one user interface, actuarial data used to create the qualified defined benefit pension plan...

(c) funding the qualified defined benefit pension plan using the selected at least one policy...

19. A system for creating a qualified defined benefit pension plan funded using variable life insurance contracts, the system comprising...

(b) at least one processor that receives the actuarial data from the user interface and, in response, electronically generates a qualified defined benefit pension plan that includes...

(ii) a source of funding for the qualified defined benefit pension plan using the variable life insurance policy...

20. A system for creating a qualified defined benefit pension plan funded using variable life insurance contracts, the system comprising...

(b) at least one processor that receives the actuarial data from the user interface and, in response, electronically generates a qualified defined benefit pension plan that includes...:

(ii) a source of funding for the qualified defined benefit pension plan using the variable life insurance policy...

21. A system for creating a qualified defined benefit pension plan funded using variable annuity contracts, the system comprising...

(b) at least one processor that receives the actuarial data from the user interface and, in response, electronically generates a qualified defined benefit pension plan that includes...:

(ii) a source of funding for the qualified defined benefit pension plan using the variable annuity policy...

22. A system for creating a qualified defined benefit pension plan funded using variable annuity contracts, the system comprising...

(b) at least one processor that receives the actuarial data from the user interface and, in response, electronically generates a qualified defined benefit pension plan that includes...

(ii) a source of funding for the qualified defined benefit pension plan using the variable life insurance policy...

23. A system for creating a qualified defined benefit pension plan funded using at least one of life insurance contracts and annuity contracts, the system comprising:

(a) at least one user interface for entering actuarial data used to create the qualified defined benefit pension plan; and

(b) at least one processor that receives the actuarial data from the user interface and, in response, electronically generates a qualified defined benefit pension plan that includes...:

(ii) a source of funding for the qualified defined benefit pension plan using the selected at least one policy...

30. A system for creating a qualified defined benefit pension plan funded using at least one of life insurance contracts and annuity contracts, the system comprising:

(a) at least one user interface for entering actuarial data used to create the qualified defined benefit pension plan; and

(b) at least one processor that receives the actuarial data from the user interface and, in response, electronically generates a qualified defined benefit pension plan that includes...:

(ii) a source of funding for the qualified defined benefit pension plan using the selected at least one policy...

5. Claims 1-9, 11-16, 18-27, 29-34 and 36 are further patentable over the applied references because they recite that a separate agreement either

(a) modifies the variable life insurance and/or variable annuity policy, or

(b) defines the terms under which the variable life insurance policy and/or variable annuity policy is to be used in the defined benefit pension plan

As fully discussed in the previous Amendment, in Ryan, there is no separate agreement that either modifies the variable life insurance policy or any variable annuity policy, or defines the terms under which the variable life insurance policy and/or variable annuity policy is to be used in the defined benefit pension plan. Nor does Schirripa disclose or suggest any scheme that makes up for this deficiency in Ryan. The relevant claim language is provided below.

(d) electronically generating a separate agreement that extra-contractually modifies the variable life insurance policy... (claim 1)

(d) electronically generating a separate agreement that defines the terms under which the variable life insurance policy is to be used in the defined benefit pension plan (claim 2)

(d) electronically generating a separate agreement that extra-contractually modifies the variable annuity policy (claim 3)

(d) electronically generating a separate agreement that defines the terms under which the variable annuity policy is to be used in the defined benefit pension plan (claim 4)

(d) electronically generating a separate agreement that extra-contractually modifies the selected at least one policy (claim 5)

(d) electronically generating a separate agreement that defines the terms under which the selected at least one policy is to be used in the defined benefit pension plan (claim 12)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(iii) a separate agreement that extra-contractually modifies the variable life insurance policy... (claim 19)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(iii) a separate agreement that defines the terms under which the variable life insurance policy is to be used in the defined benefit pension plan... (claim 20)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...

(iii) a separate agreement that extra-contractually modifies the variable annuity policy...(claim 21)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...  
(iii) a separate agreement that defines the terms under which the variable annuity policy is to be used in the defined benefit pension plan (claim 22)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...  
(iii) a separate agreement that extra-contractually modifies the selected at least one policy... (claim 23)

(b) at least one processor that...electronically generates a qualified defined benefit pension plan that includes...  
(iii) a separate agreement that defines the terms under which the selected at least one policy is to be used in the defined benefit pension plan... (claim 30)

6. Claims 37-46 are further patentable over the applied references because they recite that funds contributed to the defined benefit pension plan are allocated between a General Account and a Variable Account

As fully discussed in the previous Amendment, in Ryan, there is no disclosure or suggestion to allocate funds contributed to the ERISA plan between a General Account and a Variable Account. Nor does Schirripa disclose or suggest any scheme that makes up for this deficiency in Ryan. The relevant claim language is provided below.

(d) allocating funds contributed to the defined benefit pension plan between a General Account and a Variable Account... (claim 37)

(b) at least one processor that...electronically generates a defined benefit pension plan that includes...  
(iii) an allocation of funds contributed to the defined benefit pension plan between a General Account and a Variable Account... (claim 42)

7. Claims 37-46 are further patentable over the applied references because they recite that there is a guaranty of the plan benefits via the allocation of funds contributed to the defined benefit pension plan between a General Account and a Variable Account

As fully discussed in the previous Amendment, in Ryan, the variable life insurance policy does not guarantee the benefits of the ERISA plan discussed in Ryan. There is no disclosure or suggestion of any other scheme for guaranteeing the benefits of the ERISA plan discussed in Ryan. Nor does Schirripa disclose or suggest any scheme that makes up for this deficiency in Ryan. The relevant claim language is provided below.

(d) allocating funds contributed to the defined benefit pension plan between a General Account and a Variable Account such that the allocation guarantees the plan benefits (claim 37)

(b) at least one processor that...electronically generates a defined benefit pension plan that includes...

(iii) an allocation of funds contributed to the defined benefit pension plan between a General Account and a Variable Account such that the allocation guarantees the plan benefits (claim 42)

8. Comments regarding portions of applied  
references highlighted by Examiner

(i) The Examiner asserts that column 1, lines 9-15 and column 5, lines 5-19 of Ryan discloses administering an employer pension plan funded with variable life insurance. As fully discussed in the previous Amendment, in Ryan, the employee funds the variable life insurance policy with a combination of compensation from an employer and a loan from the ERISA plan. There is no scheme in Ryan wherein variable life insurance funds a pension plan. The text on column 1, lines 9-15 is an erroneous characterization of Ryan and is not supported by any subsequent disclosure in Ryan. The text in column 5, lines 5-19 does not disclose or suggest administering an employer pension plan funded with variable life insurance and is consistent with previously discussed explanations of Ryan.

(ii) The Examiner asserts that column 9, line 29 through column 10, line 11 of Ryan discloses using a separate agreement to modify a variable life insurance policy. No such disclosure or suggestion exists in this portion of text. This portion of Ryan discusses the 7-pay test and has nothing whatsoever with modifying the policy itself. The 7-pay test is a requirement

of IRC Section 7702A(b), attached hereto as Appendix B<sup>1</sup>. This portion of Ryan also discusses reports 9 and 10 which are merely the pertinent details of the policy, and are not an agreement that modifies the policy.

(iii) The Examiner asserts that column 11, line 16 through column 12, line 8 of Ryan discloses that funds contributed to a defined benefit pension plan are allocated between a General Account and a Variable Account. Again, this portion of Ryan further describes the 7-pay test, and more specifically discusses how to make sure that the 7-pay test is met for a given combination of premium structure and face amounts for the variable life insurance policy. This has nothing whatsoever with modifying the policy itself.

(iv) The Examiner asserts that column 2, lines 4-13 of Schirripa discloses that funds contributed to a defined benefit pension plan are allocated between a General Account and a Variable Account. Schirripa is directed to a scheme for transferring funds from a fixed annuity to a variable annuity and vice-versa without incurring an undesirable future payment distribution resulting from the transfer (see, column 4, lines 54-59). The portion of Schirripa highlighted by the Examiner has nothing whatsoever to do with funds contributed to a defined benefit pension plan. In fact, nowhere does Schirripa even discuss defined benefit pension plans. Schirripa makes one passing reference to "pensions" on column 1, line 33 by stating the well-known fact that annuities may play a significant role in pensions. In sum, Schirripa fails to disclose or suggest that funds contributed to a defined benefit pension plan can be allocated between a General Account and a Variable Account.

### *Conclusion*

Insofar as the Examiner's rejections were fully addressed, the instant application is in condition for allowance. Issuance of a Notice of Allowability of all pending claims is therefore earnestly solicited.

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<sup>1</sup> Appendix B was also discussed in the previous Amendment, but was inadvertently not attached to that Amendment.

Application No. 10/086,924  
Reply to Office Action of September 27, 2004

Respectfully submitted,

JOHN J. KORESKO V

November 30, 2004 By: \_\_\_\_\_  
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Enclosures (Appendix B only)

**Sec. 7702A. - Modified endowment contract defined****(a) General rule**

For purposes of section 72, the term "modified endowment contract" means any contract meeting the requirements of section 7702 -

**(1)**


which -

**(A)**

is entered into on or after June 21, 1988, and

**(B)**

fails to meet the 7-pay test of subsection (b), or  
(2) which is received in exchange for a contract described in paragraph (1) or this paragraph.

**(b) 7-pay test**

For purposes of subsection (a), a contract fails to meet the 7-pay test of this subsection if the accumulated amount paid under the contract at any time during the 1st 7 contract years exceeds the sum of the net level premiums which would have been paid on or before such time if the contract provided for paid-up future benefits after the payment of 7 level annual premiums.

**(c) Computational rules****(1) In general**

Except as provided in this subsection, the determination under subsection (b) of the 7 level annual premiums shall be made -

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**(A)**

as of the time the contract is issued, and

**(B)**

by applying the rules of section 7702(b)(2) and of section 7702(e) (other than paragraph (2)(C) thereof), except that the death benefit provided for the 1st contract year shall be deemed to be provided until the maturity date without regard to any scheduled reduction after the 1st 7 contract years.

**(2) Reduction in benefits during 1st 7 years**

**(A) In general**

If there is a reduction in benefits under the contract within the 1st 7 contract years, this section shall be applied as if the contract had originally been issued at the reduced benefit level.

**(B) Reductions attributable to nonpayment of premiums**

Any reduction in benefits attributable to the nonpayment of premiums due under the contract shall not be taken into account under subparagraph (A) if the benefits are reinstated within 90 days after the reduction in such benefits.

**(3) Treatment of material changes**

**(A) In general**

If there is a material change in the benefits under (or in other terms of) the contract which was not reflected in any previous determination under this section, for purposes of this section -

**(i)**

such contract shall be treated as a new contract entered into on the day on which such material change takes effect, and

**(ii)**

appropriate adjustments shall be made in determining whether such contract meets the 7-pay test of subsection (b) to take into account the cash surrender value under the old contract.

**(B) Treatment of certain benefit increases**

For purposes of subparagraph (A), the term "material change" includes any increase in the death benefit under the contract or any increase in, or addition of, a qualified additional benefit under the contract. Such term shall not include -

**(i)**

any increase which is attributable to the payment of premiums necessary to fund the lowest level of the death benefit and qualified additional benefits payable in the 1st 7 contract years (determined after taking into account death benefit increases described in subparagraph (A) or (B) of section 7702(e)(2)) or to crediting of interest or other earnings (including policyholder dividends) in respect of such premiums, and

**(ii)**

to the extent provided in regulations, any cost-of-living increase based on an established broad-based index if such increase is funded ratably over the remaining period during which premiums are required to be paid under the contract.

**(4)**

Special rule for contracts with death benefits of \$10,000 or less

In the case of a contract -

**(A)**

which provides an initial death benefit of \$10,000 or less, and

**(B)**

which requires at least 7 nondecreasing annual premium payments,

each of the 7 level annual premiums determined under subsection (b) (without regard to this paragraph) shall be increased by \$75. For purposes of this paragraph, the contract involved and all contracts previously issued to the same policyholder by the same company shall be treated as one contract.

**(5) Regulatory authority for certain collection expenses**

The Secretary may by regulations prescribe rules for taking into account expenses solely attributable to the collection of premiums paid more frequently than

annually.

**(6) Treatment of certain contracts with more than one insured**

If -

**(A)**

a contract provides a death benefit which is payable only upon the death of 1 insured following (or occurring simultaneously with) the death of another insured, and

**(B)**

there is a reduction in such death benefit below the lowest level of such death benefit provided under the contract during the 1st 7 contract years,

this section shall be applied as if the contract had originally been issued at the reduced benefit level.

**(d) Distributions affected**

If a contract fails to meet the 7-pay test of subsection (b), such contract shall be treated as failing to meet such requirements only in the case of -

**(1)**

distributions during the contract year in which the failure takes effect and during any subsequent contract year, and

**(2)**

under regulations prescribed by the Secretary, distributions (not described in paragraph (1)) in anticipation of such failure.

For purposes of the preceding sentence, any distribution which is made within 2 years before the failure to meet the 7-pay test shall be treated as made in anticipation of such failure.

**(e) Definitions**

For purposes of this section -

**(1) Amount paid**

**(A) In general**

The term "amount paid" means -

(i)

the premiums paid under the contract, reduced by

(ii)

amounts to which section 72(e) applies (determined without regard to paragraph (4)(A) thereof) but not including amounts includible in gross income.

**(B) Treatment of certain premiums returned**

If, in order to comply with the requirements of subsection (b), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of such contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such contract year.

**(C) Interest returned includible in gross income**

Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

**(2) Contract year**

The term "contract year" means the 12-month period beginning with the 1st month for which the contract is in effect, and each 12-month period beginning with the corresponding month in subsequent calendar years.

**(3) Other terms**

Except as otherwise provided in this section, terms used in this section shall have the same meaning as when used in section 7702

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